

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:21-cr-87-RJC-DCK-1**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>60-DAY ORDER</b>
	)	
	)	
<b>TIMOTHY HERRON,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**THIS MATTER** is before the Court on Defendant's pro se Motions to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody under 28 U.S.C. § 2255. [Docs. 59, 60].

The Defendant has filed two Motions to Vacate in this matter, both of which were received and docketed by the Court on April 2, 2024. [Docs. 59, 60]. A review of these Motions reveals that the Defendant signed them and filed them pursuant to the prisoner mailbox rule on March 29, 2024 and March 26, 2024, respectively.<sup>1</sup> The first-docketed Motion [Doc. 59] was filed second in time and, therefore, it is the operative superseding Amended Motion to Vacate. See generally Young v. City of Mount Ranier, 238 F.3d 567 (4th Cir. 2001), *abrogated on other grounds by Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023). The Clerk will be instructed to modify the text of the Court's docket accordingly.

The Court has conducted an initial screening of the Amended Motion to Vacate [Doc. 59] under the Rules Governing § 2255 Proceedings, Rule 4(b) 28 U.S.C.A. foll. § 2255, and finds that: (1) the petition has been filed pro se under penalty of perjury; (2) the petition appears to be timely;

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<sup>1</sup> Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing the prisoner mailbox rule); Rule 3(d), 28 U.S.C. foll. § 2255 (addressing inmate filings).

and (3) Defendant has asserted a colorable claim for relief cognizable under § 2255(a). Upon consideration of the motion and the record of prior proceedings, the Court determines that the United States Attorney should file a response to Defendant's allegations.

The Court will direct that the United States file an answer or other responsive pleading to the Amended Section 2255 Motion to Vacate within sixty (60) days. Defendant may file a reply to the United States' response pursuant to Rule 5(d) of the Rules Governing Section 2255 Proceedings. The Court orders that any such reply must be filed within twenty-one (21) days of the filing of the United States' response.

**IT IS, THEREFORE, ORDERED** that:

1. The Clerk is instructed to modify the text of the Court's docket to show that Docket Entry 60 is the original Motion to Vacate, and Docket Entry 59 is the superseding Amended Motion to Vacate.
2. The United States Attorney shall file an answer or other responsive pleading to Defendant's Amended Motion to Vacate, Set Aside, or Correct Sentence [Doc. 59] no later than **sixty (60) days** from the date of this Order.
3. Any reply filed by Defendant must be filed within **twenty-one (21) days** of the United States' response.

Signed: April 4, 2024

  
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Robert J. Conrad, Jr.  
United States District Judge  
